

DOCKET SECTION

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

RECEIVED

OCT 30 4 21 PM '97

POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

POSTAL RATE AND FEE CHANGES, 1997

Docket No. R97-1

OPPOSITION OF UNITED STATES POSTAL SERVICE TO DOUGLAS F. CARLSON MOTION TO ADMIT DFC/USPS-T40-XE-1-9 AND LR-DFC-1 INTO EVIDENCE (October 30, 1997)

The United States Postal Service hereby opposes the Douglas F. Carlson Motion to Admit DFC/USPS-T40-XE-1-9 and LR-DFC-1 Into Evidence (Motion), filed October 20, 1997.^{1/} The letters from Mr. Carlson and Mr. Popkin, and the responses from the Postal Service and the Internal Revenue Service (IRS), should be introduced, if at all, through testimony by Mr. Carlson and Mr. Popkin. In this way, testimony as to the significance of the letters, as well as the letters themselves, would be subjected to written and oral cross-examination prior to being moved into evidence. Moreover, the letters' admissibility as evidence could be evaluated in the context of how they are used by a witness, "which is essential to the inquiry" of whether they are admissible. Presiding Officer's Ruling No. R90-1/65 (September 6, 1990).

The Commission should not allow into the record random documents that are not sponsored by the party that created them, without an evidentiary basis having been established for their admission and without, at least, some context that explains their relationship to the Postal Service's Request. Clearly, Mr. Carlson's motion indicates that the letters are intended to support a substantive proposal that he intends to

^{1/} This document was mailed to the Postal Service on October 17, 1997, but was not received by counsel until October 23, 1997. While the Postal Service does not believe this Opposition is late, the Postal Service hereby moves for late acceptance of this pleading if necessary.

make. He has expressed that proposal, however, as argument, rather than as testimony supporting his position. Furthermore, no attempt has been made to authenticate these documents in accordance with the rules of evidence. The only, very limited, attempt to establish their status took place in connection with the cross-examination of witness Plunkett. Tr. 3/1021-23.

Mr. Carlson appears to believe that he may authenticate the letters and establish an evidentiary basis for them by inducing a Postal Service witness to refer to them during cross-examination. Mr. Carlson introduced these letters as a cross-examination exhibit at the end of his cross-examination of witness Plunkett. However, notwithstanding that the latest of these letters is dated nearly 3 weeks before witness Plunkett's hearing, Mr. Carlson did not provide the letters to witness Plunkett in advance of the hearing, or even on the day of the hearing, so that Mr. Plunkett could review them prior to the hearing. In fact, Mr. Carlson asked to present his cross-examination late in the hearing for Mr. Plunkett, apparently so that the letters would not be provided until after other cross-examination on the issues raised by the letters. Tr. 3/945, 987-993. Then, Mr. Carlson, referring to only some of the letters, asked witness Plunkett only a few general questions about those letters; Mr. Plunkett's responses clearly did not serve to authenticate the letters, nor show that he had relied on them or could sponsor them. See Tr. 3/1021-23.

Mr. Carlson's superficial attempt to authenticate these documents should not be permitted to establish sufficient basis for their admission. He could have used conventional means during discovery to establish their status. He did not.^{2/} He attempted to surprise the witness at the end of his cross-examination, apparently

^{2/} We must strongly emphasize that the period for conducting discovery related to the Postal Service's proposals has long since passed.

hoping that the timing would prevent an inquiry into the circumstances that led to their creation. Even as cross-examination exhibits, they were not in compliance with the Commission's rules, nor with any reasonable attempt to give the witness fair notice or sufficient information to form the basis for testimony as to the documents' status.

Furthermore, if these documents are intended to support a substantive proposal that Mr. Carlson is making, or rebuttal of the Postal Service's testimony, the Commission's rules and due process require that they be offered by him at a time and in a manner that gives the Postal Service a fair opportunity to inquire about them and to challenge their use through discovery, cross-examination, and rebuttal. In this regard, we note that Mr. Carlson seeks to enter into the record several letters that were not referred to at all at witness Plunkett's hearing.^{3/} It appears, moreover, that Mr. Carlson is not providing a complete record of his correspondence with the Postal Service and the IRS. He has not included the initial correspondence which he followed-up with his August 28, 1997 letters to Mr. W. L. Bonds, and Mr. Dennis P. Walsh.^{4/} Moreover, there may be other correspondence involving Mr. Carlson or Mr. Popkin with the Postal Service or the IRS that is relevant to the treatment of return receipts, but that has been omitted from the materials that Mr. Carlson moves for admission into evidence. Even if there is no additional correspondence, Mr. Carlson and Mr. Popkin could, through testimony and discovery, provide needed context to the letters, and additional information about their experience with return receipt

^{3/} See DFC/USPS-T40-XE-5(a) and (b), 7, 8, 9(a), and 9(b). The Postal Service does not believe that such letters should be excluded from the record, if the other letters are entered into evidence, especially since they appear to indicate that the Postal Service safeguards the authenticity of the return receipts more than Mr. Carlson indicates. See Motion at 2-3.

^{4/} LR-DFC-1, at 1, 5.

service. Such matters require testimony, and the opportunity for discovery and cross-examination, that usually precede the admission of relevant materials into the record.^{5/}

Mr. Carlson, furthermore, overstates the materiality and relevance of these letters to the value of service for return receipt service. Contrary to the implication in Mr. Carlson's Motion, at 2, witness Plunkett's assertion that the Postal Service's status as a disinterested third party contributes to the value of return receipts did not refer to mail sent to the IRS, but rather to a hypothetical of Mr. Carlson's involving the use of self-addressed, stamped post cards instead of return receipt service. Tr. 3/848–850. Moreover, at his hearing witness Plunkett explained that the main reason customers choose return receipt service for mail sent to the IRS is to learn whether the IRS received the mail before a tax deadline, regardless of whether the card was filled out at the time of delivery by the Postal Service, or under the supervision of the Postal Service. Tr. 3/1019, 1023, 1031-32.

If Mr. Carlson is seeking to have the letters admitted to rebut the Postal Service's testimony concerning the value of service for return receipt service (Motion at 2-3), the November 17 date for filing rebuttal to the Postal Service's direct case would be the appropriate time to present testimony supporting their introduction as evidence. Then, the proper treatment of the letters could be determined. In this regard, in Docket No. R90-1, the Presiding Officer determined that Postal Service documents that were not adopted by an intervenor witness, but were simply used to support the

^{5/} In this regard, the nonstandard surcharge library reference that Mr. Carlson discusses on page 3 of his motion has been the subject of extensive discovery, contrary to Mr. Carlson's claim. Moreover, the Postal Service has provided the supplemental testimony of witness Daniel (USPS-ST-43) to sponsor this library reference for admission into the record.

witness' position, were not admissible as evidence, but could instead be treated as a library reference. Presiding Officer's Ruling No. R97-1/65, at 9-10.

Finally, the Postal Service is also concerned about the manner in which these letters were generated. As inquiries by an intervenor into matters raised by the Postal Service's Request for the purpose of obtaining information that could be used in this proceeding, Mr. Carlson's and Mr. Popkin's correspondence are in the nature of discovery. At least some of Mr. Carlson's letters to the Postal Service, in fact, were dated during the period for discovery on the Postal Service in Docket No. R97-1.^{6/} In these circumstances, the Postal Service believes that, as an intervenor in the case, Mr. Carlson should have directed such inquiries to the Postal Service through its counsel.

The Commission's rules of practice and procedure are designed in part to give the Commission a means to ensure the orderly conduct of its proceedings, to afford all parties due process of law, and to create mechanisms through which an accurate and reliable evidentiary record can be created. In this regard, whether any conditions can be placed on an individual's ability to communicate with the Postal Service about matters affecting him or her as a citizen or customer is a complex question. The Postal Service submits, however, that where, in these proceedings, the Postal Service is entitled under the Commission's rules to have legal representation and to present its case as a single party, fairness and due process demand that other parties behave in a way that gives effect to that representation. Otherwise, the potential for eliciting apparently conflicting information from an organization as large, diverse, and in many ways decentralized as the Postal Service will create needless complications. Moreover, the effort to ensure that Commission proceedings are

^{6/} LR-DFC-1 at 1, 5, 7, and 13.

orderly, that no party is unreasonably burdened by the need to clarify the record, and that the information on which the Commission hopes to rely is as accurate as possible, would be markedly increased.

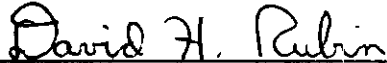
For all these reasons, the Postal Service opposes Mr. Carlson's motion to admit DFC/USPS-T40-XE-1-9 and LR-DFC-1 into evidence.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.
Chief Counsel, Ratemaking



David H. Rubin

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.



David H. Rubin

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
(202) 268-2986; Fax -5402
October 30, 1997